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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

CP 690

In the Matter of the Application of PATHNET, INC.,)	
for a Certificate of Authority to Provide)	
Telecommunications Services in Oregon and)	ORDER
Classification as a Competitive Provider.)	

DISPOSITION: APPLICATION GRANTED

Note: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

The Application

On August 2, 1999, Pathnet, Inc. (applicant) filed with the Commission an application for certification to provide telecommunications service in Oregon as a competitive provider. Applicant seeks to provide intraexchange (local exchange) telecommunications service in areas coextensive with local exchanges of U S WEST Communications, Inc. (USWC). Applicant also seeks to provide interexchange telecommunications service, including private line service, statewide in Oregon.

The local exchanges of USWC encompassed by the application are listed in Appendix A to this order.

Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone) and nonswitched private line service (dedicated transmission service) in exchanges listed in Appendix A to this order. Applicant also proposes to provide interexchange switched telecommunications service (i.e., long distance toll) and nonswitched private line service (dedicated transmission service) statewide in Oregon. Applicant will operate as a reseller and as a facilities based provider of the above services. Applicant may purchase unbundled network elements (building blocks), as well as finished services, from other certified carriers.

Operator services are part of switched telecommunications service. Applicant will not directly provide operator services as defined in OAR 860-032-0001. Applicant will not be an 'operator service provider' as defined in ORS 759.690(1)(d). A statement of compliance with Commission rules and with state law, including ORS 759.690 and OAR 860-032-0005 (regarding operator services), was included in the application.

The Commission served notice of the application on the Commission's telecommunications mailing list on August 12, 1999. The Commission did not receive any protests. However, USWC will be considered a party to this proceeding. On September 13, 1999, an Administrative Law Judge (ALJ) with the Commission issued a ruling that adopted procedures for processing this docket. The ALJ set forth a procedural schedule. On September 24, 1999, the Commission Staff (Staff) distributed a proposed order for review by the parties. No exceptions to the proposed order were filed.

The Commission has reviewed the proposed order and the record in this matter. Based on a preponderance of the evidence, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Applications to provide telecommunications service and for classification as a competitive telecommunications service provider are filed pursuant to ORS 759.020. ORS 759.020 provides that:

(1) No person [or] corporation * * * shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the commission under this section.

* * * * *

(5) The commission may classify a successful applicant for a certificate as a * * * competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. * * * For purposes of this section, in determining whether there are reasonably available alternatives, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

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- (b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.

Applications to provide local exchange (intraexchange) telecommunications service are also reviewed pursuant to ORS 759.050, the “competitive zone law.” Under ORS 759.050(2)(a), the Commission may:

Certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certified telecommunications utility, if the commission determines that such authorization would be in the public interest. For the purpose of determining whether such authorization would be in the public interest, the commission shall consider:

- (A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.
- (B) The effect on competition in the local exchange telecommunications service area.
- (C) The effect on access by customers to high quality innovative telecommunications service in the local exchange telecommunications service area.
- (D) Any other facts the commission considers relevant.

Under ORS 759.050(2)(b), the Commission shall:

Upon certification of a telecommunications provider under paragraph (a) of this subsection, establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider.

Under ORS 759.050(2)(c), the Commission may:

Impose reasonable conditions upon the authority of [the applicant] to provide competitive zone service within the competitive zone * * * at the time of certification of a telecommunications provider, or thereafter.

Subsection (5)(a) of ORS 759.050 provides that:

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Unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes, service variations, and modifications of competitive zone services offered by a telecommunications utility in the zone shall not be subject to ORS 759.180 to ORS 759.190 [notice, hearing and tariff suspension procedures], and at the telecommunications utility's discretion, such changes may be made effective upon filing with the commission.

ORS 759.690 and OAR 860-032-0005 establish certain requirements providers of operator services must meet. Included are the following conditions:

The certificate holder involved in the provision of operator services shall:

1. Notify all callers at the beginning of the call of the telecommunications provider's name and allow a sufficient delay period to permit a caller to terminate the call or advise the operator to transfer the call to the customer's preferred carrier.
2. Disclose rate and service information to the caller when requested.
3. Not transfer a call to another operator service provider without the caller's notification and consent.
4. Not screen calls and prevent or "block" the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder shall, through contract provisions with its reseller clients, prohibit the reseller from blocking a caller's access to his or her operator service company of choice.
5. When entering into operator service contracts or arrangements with call aggregators include in each contract provisions for public notification. A sticker or nameplate identifying the name of the certificate holder shall be attached to, or in close proximity to, each telephone that has public access.

OAR 860-032-0015(1) authorizes the Commission to suspend or cancel the certificate if the Commission finds that (a) the holder made misrepresentations when it filed the application, or (b) the applicant fails to comply with the terms and conditions of the certificate.

Designation as a Competitive Provider

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utility, USWC, provides

the same or similar local exchange services in the local service area requested by applicant. AT&T, MCI, Sprint Communications, USWC, and others provide interexchange toll, private line and operator services in the service area requested by the applicant. Subscribers to applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

Conditions of the Certificate

As part of the application, the applicant agreed to, or acknowledged, several conditions listed in the application. Those conditions are adopted and made conditions of this certificate of authority.

The Commission first applied the competitive zone law, ORS 759.050, in dockets CP 1, CP 14, and CP 15. After full evidentiary hearings and consideration of the public interest criteria set forth in ORS 759.050(2)(a), the Commission designated three competitive providers of switched local exchange services as alternate exchange carriers (AECs or competitive local exchange carriers (CLECs)) in the Portland metropolitan area. *See* Order No. 96-021. The Commission subsequently applied those findings and conclusions to dockets CP 132, CP 139, and CP 149, and certified two CLECs to provide switched local exchange services in areas located throughout the state.

The Commission takes official notice of the record in dockets CP 1, CP 14, and CP 15.¹ In Order No. 96-021, the Commission established conditions applicable to CLEC certificates. Since applicant, Pathnet, Inc., proposes to offer switched local exchange services, it seeks certification as a CLEC. Pursuant to ORS 759.050(2)(c) and Order No. 96-021, applicant as a CLEC shall comply with the following conditions:

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications service providers that have been issued a certificate of authority by the Commission.
2. Whenever applicant terminates intrastate long distance traffic directly or indirectly from interexchange carriers or from its own toll network to its end user customers, applicant shall contribute to the Oregon Customer Access Fund (OCAF), or its equivalent, in accordance with provisions of the Oregon Customer Access Plan (OCAP) or any successor plan approved by the Commission. Applicant shall contribute using rates approved by the Commission on intrastate terminating carrier common line access minutes, or on any other basis determined by the Commission. Applicant may not participate

¹ Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

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in (i.e., receive money from) pooling arrangements established under the OCAP or any successor plan unless authorized by the Commission.

3. Applicant shall comply with the Oregon Exchange Carrier Association's (OECA) informational and operational needs as specified by the OCAP or any successor plan approved by the Commission.
4. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to make certain that all users of their services have access to the emergency system. Applicant will deliver or arrange to have delivered to the correct 911 Controlling Office its customers' voice and dialable Automatic Number Identification (ANI) telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct Public Safety Answering Point (PSAP). Applicant agrees to work with each 911 district and lead 911 telecommunications service provider to develop database comparison procedures to match applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant agrees to provide the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.
5. Applicant shall not take any action that impairs the ability of other certified telecommunications service providers to meet service standards specified by the Commission.
6. At the request of the Commission, applicant shall conduct, and submit to the Commission, traffic studies regarding traffic exchanged with telecommunications service providers and other entities designated by the Commission.
7. For purposes of distinguishing between local and toll calling, applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Further, applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.
8. When applicant is assigned one or more NXX codes, applicant shall limit each of its NXX codes to a single local exchange and shall establish a toll rate center in each exchange that is proximate to the toll rate center established by the telecommunications utility serving the exchange.
9. Applicant shall comply with universal service requirements as determined by the Commission.

10. Unless otherwise provided pursuant to an interconnection agreement adopted by the Commission pursuant to Section 252 of the Telecommunications Act of 1996, applicant shall enter into interconnection agreements with telecommunications utilities for exchange of local and EAS traffic, ancillary services (i.e., directory listings, directory assistance, 911 arrangements, mutual repair referral) and other interconnection matters in accordance with requirements the Commission established in Order No. 96-021 as otherwise modified by the Commission.
11. If applicant provides services to a subscriber who, in turn, resells the services, including operator services, then applicant and the subscriber must comply with ORS 759.690 and OAR 860-032-0005.

Public Interest

In Order No. 93-1850, docket UM 381, the Commission considered the public interest aspects of local exchange competition for dedicated transmission service similar to that described in the application before us now. In dockets CP 1, CP 14, and CP 15, Order No. 96-021, the Commission made several public interest findings regarding local exchange competition in general.

The Commission's Findings of Fact and Opinion in docket UM 381, Order No. 93-1850, at pages 4 – 6, and the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 6 - 21, entered pursuant to ORS 759.050(2)(a)(A) - (C), are adopted. The Commission takes official notice of the record in dockets UM 381, CP 1, CP 14, and CP 15.² Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Pathnet, Inc., to provide local exchange telecommunications service as a competitive telecommunications provider in the exchanges listed in Appendix A.

Competitive Zones

The exchanges listed in Appendix A to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

Pricing Flexibility

In Order No. 93-1850, docket UM 381, the Commission granted pricing flexibility for dedicated transmission service at the time the Commission granted the certificate of authority. Applicant seeks authority to provide intraexchange dedicated transmission service.

² Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

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Accordingly, USWC is granted pricing flexibility for dedicated transmission service in the exchanges listed in Appendix A.

For intraexchange, switched telecommunications service the following applies. The Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 82 and 83, entered pursuant to ORS 759.050(5)(a) - (d), are adopted. Accordingly, USWC will gain pricing flexibility in an exchange listed in Appendix A when:

1. Applicant, or an authorized CLEC, has received a certificate of authority to provide local exchange service.
2. USWC files a tariff that satisfies the Commission's requirements regarding the provision of interim number portability, as set forth in Order No. 96-021, and the Commission approves the tariff. USWC satisfied this requirement. *See* Order No. 96-277.
3. Staff notifies the Commission that a mutual exchange of traffic exists between USWC and an authorized CLEC, including but not limited to, applicant. If Staff previously provided the required notice regarding an exchange, no additional notice is required for that exchange.

(a) As used in paragraph 3 above, "mutual exchange of traffic" means a mutual exchange of traffic between USWC and the CLEC within each exchange on an exchange-by-exchange basis. For example, if there is a mutual exchange of traffic in the Bend exchange, USWC would get pricing flexibility in the Bend exchange only.

(b) As used in paragraph 3 above, for a CLEC who is a reseller (i.e., the CLEC does not use its own lines or switches to provide the particular service at issue), a "mutual exchange of traffic" exists when the CLEC orders and receives one service, at a wholesale rate, from the LEC for resale pursuant to a certificate granted under ORS 759.050.

ORDER

IT IS ORDERED that:

1. The application of Pathnet, Inc., to provide intraexchange switched service and dedicated transmission service, and to provide interexchange switched (toll) service and dedicated transmission service, as described in the application, is in the public interest and is granted with conditions described in this order.

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2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the exchanges listed in Appendix A, and for intrastate, interexchange service statewide in Oregon.
3. The local exchanges of USWC listed in Appendix A are designated as competitive zones.
4. USWC shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.
5. Pursuant to ORS 759.050(2)(c), applicant shall comply with Commission imposed universal service requirements as a condition of authority to provide local exchange service.

Made, entered, and effective _____.

William G. Warren
Director
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to ORS 756.580.

APPENDIX A

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EXCHANGES OF U S WEST COMMUNICATIONS, INC.
ENCOMPASSED BY THE APPLICATION

Albany	Mapleton
Ashland	Marcola
Astoria	Medford
Athena/Weston	Milton-Freewater
Baker	Newport
Bend	North Plains
Blue River	Oak Grove/Milwaukie
Burlington	Oakland/Sutherlin
Camp Sherman	Oakridge
Cannon Beach	Oregon City
Central Point	Pendleton
Corvallis	Phoenix/Talent
Cottage Grove	Portland
Culver	Prineville
Dallas	Rainier
Eugene/Springfield	Redmond
Falls City	Rogue River
Florence	Roseburg
Gold Hill	St. Helens
Grants Pass	Salem
Harrisburg	Seaside
Hermiston	Siletz
Independence/Monmouth	Sisters
Jacksonville	Stanfield
Jefferson	Sumpter
Junction City	Toledo
Klamath Falls	Umatilla
Lake Oswego	Veneta
Lapine	Walla Walla
Leaburg	Warrenton
Lowell	Westport
Madras	Woodburn/Hubbard

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